



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

July 7, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Jeffrey L. Mirabal**
Tax Registry No. 927796
Manhattan Court Section
Disciplinary Case No. 83247/07

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-Depeyster on December 10, 2008 and was charged with the following:

DISCIPLINARY CASE NO. 83247/07

1. Said Police Officer Jeffrey Mirabal, assigned to Transit Bureau District #12, on or about July 23, 2007, while off-duty, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer did discharge one round from his Smith & Wesson, .38 caliber revolver, serial # [REDACTED] during a domestic dispute.

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

2. Said Police Officer Jeffrey Mirabal, assigned to Transit Bureau District #12, on or about July 23, 2007, while off duty, in Bronx County, did fail and neglect to properly safeguard his firearm, to wit: a Smith & Wesson, .38 caliber revolver, serial # [REDACTED] by discharging said firearm one time for no legitimate police purpose.

P.G. 204-08, Page 2, Paragraph 7

**FIREARMS-GENERAL REGULATIONS
UNIFORM AND EQUIPMENT**

3. Said Police Officer Jeffrey Mirabal, while assigned to Transit Bureau District #12, on or about July 23, 2007, while off-duty, in Bronx County, was wrongfully in possession of an unauthorized New York City Police Department shield without permission to do so. (As Amended)

P.G. 203-10, Page 2, Paragraph 18

**PUBLIC CONTACT – PROHIBITED
CONDUCT**

4. Said Police Officer Jeffrey Mirabal, while assigned to Transit Bureau District #12, on or about October 4, 2006, while on duty, in Bronx County, after purchasing a .38 caliber firearm, did fail to deliver a prepared Acquisition or Disposition of Firearms By Police Officers – Report to New York State Police form (PD 424-150) to the desk officer of said officer's command. (As Amended)

Interim Order 5(05) – Revision to P.G. 204-10, Paragraph 9

**HANDGUN
PURCHASE**

5. Said Police Officer Jeffrey Mirabal, while assigned to Transit Bureau District #12, on or about and between October 1, 2005 and July 23, 2007, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer, after discharging a firearm while off duty in October of 2005, did fail to request a patrol supervisor, and thereafter did continually fail to notify the Department of the firearms discharge until July 23, 2007. (As Amended)

P.G. 203-10, Page 1, Paragraph 5

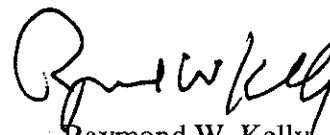
**PUBLIC CONTACT – PROHIBITED
CONDUCT GENERAL REGULATIONS**

In a Memorandum dated May 27, 2009, Assistant Deputy Commissioner Daniels-DePeyster accepted Respondent Mirabal's PLEADING GUILTY to Specification Nos. 2 and 3, found the Respondent Guilty of Specification Nos. 4 and 5, and found the Respondent NOT GUILTY of Specification No. 1. Having read the Memorandum and analyzed the facts of this instant matter, I approve the findings, but disapprove the penalty.

Assistant Deputy Commissioner Daniels-DePeyster deemed the evidence to be clear that the Respondent is unable to handle his firearm during stressful situations. Further, that the Respondent has demonstrated his inability to comply with Department procedure by failing to report the discharge of his firearm in 2005. Consequently, I agree with Assistant Deputy Commissioner Daniels-DePeyster's recommendation that Respondent Mirabal be immediately separated from the Department.

At this time, I will permit a manner of separation from the Department whereby a post-trial vested-interest retirement agreement is to be implemented with the Respondent. In consideration of such agreement, Respondent Mirabal is to remain, and to separate from the Department, on a continued suspended duty status. The Respondent is to also forfeit all suspension days since served and to be served, including all accrued leave and time balances, and will immediately be placed on a One-Year Dismissal Probation period.

Such vested-interest retirement shall also include Respondent Mirabal's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department, including to seek reinstatement or return to the Department. If Respondent Mirabal does not agree to the terms of this vested-interest retirement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.


Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

May 27, 2009

-----X
In the Matter of the Charges and Specifications : Case No. 83247/07

- against - :

Police Officer Jeffrey Mirabal :

Tax Registry No. 927796 :

: :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

APPEARANCE:

For the Department:

Lisa Bland, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent:

Michael Martinez, Esq.
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on December 10, 2008, charged with the following:

1. Said Police Officer Jeffrey Mirabal, assigned to Transit Bureau District #12, on or about July 23, 2007, while off-duty, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer did discharge one round from his Smith & Wesson, .38 caliber revolver, serial [REDACTED] during a domestic dispute.

P.G. 203-10, – Page 1 – Paragraph 5 – PROHIBITED CONDUCT

2. Said Police Officer Jeffrey Mirabal, assigned to Transit Bureau District #12, on or about July 23, 2007, while off-duty, in Bronx County, did fail and neglect to properly safeguard his firearm, to wit: a Smith & Wesson, .38 caliber revolver, serial [REDACTED] by discharging said firearm one time for no legitimate police purpose.

P.G. 204-08, – Page 2 – Paragraph 7 – FIREARMS-GENERAL REGULATIONS
UNIFORMS AND EQUIPMENT

3. Said Police Officer Jeffrey Mirabal, while assigned to Transit Bureau District 12, on or about July 23, 2007, while off-duty, in Bronx County, was wrongfully in possession of an unauthorized New York City Police Department shield without permission to do so. *(As Amended)*

P.G. 203-10, – Page 2 – Paragraph 18 – PUBLIC CONTACT – PROHIBITED
CONDUCT

4. Said Police Officer Jeffrey Mirabal, while assigned to Transit Bureau District 12, on or about October 4, 2006, while on duty, in Bronx County, after purchasing a .38 caliber firearm, did fail to deliver a prepared Acquisition or Disposition of Firearms By Police Officers – Report to New York State Police form (PD 424-150) to the desk officer of said officer's command. *(As Amended)*

Interim Order 5(05) – Revision to P.G. 204-10, Paragraph 9 – HANDGUN
PURCHASE

5. Said Police Officer Jeffrey Mirabal, while assigned to Transit Bureau District 12, on or about and between October 1, 2005 and July 23, 2007, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer, after discharging a firearm while off duty in October of 2005, did fail to request a patrol supervisor, and thereafter did continually fail to notify the Department of the firearms discharge until July 23, 2007. *(As Amended)*

P.G. 203-10, – Page 1 – Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT GENERAL REGULATIONS

The Department was represented by Lisa Bland, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Guilty to Specification Nos. 2 and 3 and Not Guilty to Specification Nos. 1, 4 and 5. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty of Specification No. 1, having pleaded Guilty is found Guilty of Specification Nos. 2 and 3, and Guilty of Specification Nos. 4 and 5.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Thomas Twyman as its witness. The Department also offered the out-of-court tape recorded statement of Ivonne Rodriguez (Department Exhibit) DX 1 as evidence.

Sergeant Thomas Twyman

Twyman has been a member of the New York City Police Department for over ten years. He is currently assigned to the Intelligence Division. He testified that he has been assigned to the Intelligence Division for approximately one year. Prior to working

in that unit, he was assigned to the Internal Affairs Bureau (IAB) Group No. 22 in the Bronx for two years and eight months. While assigned to the Intelligence Division, he was in charge of all confidential informants for the Department and handled all of the search warrants that came through the Department. He stated that his duties also included "safety netting before entering a location" to execute a search warrant. He said that he does supervise other members of the service. While assigned to IAB, his duties included conducting investigations regarding acts of misconduct and corruption involving members of the service. He stated that his training in IAB included a two-week course regarding investigations. He was promoted to the rank of sergeant in September of 2004.

Twyman testified that on July 23, 2007 he was working in IAB Group No. 22. He received a call out which involved information that a boyfriend and girlfriend had an argument and that a firearm was discharged. He stated that his investigation included responding to the location. Twyman stated that he interviewed the girlfriend, Ivonne Rodriguez who was the victim/complainant. He also tried to talk to neighbors as well as interview the Respondent and other police officers in the command. He stated that he reported to [REDACTED] in the confines of the 44 Precinct in Bronx County. He also conducted an interview of her which was recorded and took place at the Bronx Borough Investigations office located in the confines of the 48 Precinct. Following his interview of Rodriguez, Twyman stated that he had an occasion to confer with the Bronx District Attorney's office. He stated that the conferral was to determine whether or not criminal charges would be preferred against the Respondent. He stated that he took Rodriguez to the Bronx District Attorney's office to be interviewed by an Assistant District Attorney (ADA) but did not sit through it. Twyman said he was, however,

present during the interview of Rodriguez conducted at the borough office. He stated that the interview took place the night of the incident on July 23, 2007.

Following the initial interview of Rodriguez at the Patrol Borough Bronx office, he stated that within two weeks he attempted to re-contact her so that she could be re-interviewed by the District Attorney's office. He attempted to contact her on her cell phone which was not in service. He physically went to her dwelling and knocked on the door and there was no answer. He interviewed a neighbor who informed him that Rodriguez's children told her that they were moving. He went downstairs and spoke to the superintendent of the building who stated that she had not paid her rent, that they were in the process of evicting her and that he also heard she was planning to move to Miami, Florida. Twyman stated that during his conversations he did have with Rodriguez, she informed him that she may not be available in the future because she was planning to move to Florida. She also stated that she loved the Respondent and that she really did not want to testify against him. Twyman stated that he was present during the entire tape recorded interview of Rodriguez.

Twyman testified about what Rodriguez had informed him when he responded to the location. Rodriguez stated that she was in the apartment with the Respondent and her two children. She was in her bedroom and the Respondent was upset. He entered her bedroom, lowered the music and told her that he did not like her smoking and drinking and then he left the bedroom. Rodriguez stated that she turned the music back up and a short time later she heard a gun shot. She came out of the bedroom and saw the Respondent with bullets in one hand and a gun in the other hand facing the exterior, outside wall of the apartment. Rodriguez stated that the Respondent said he did not know

that there were anymore bullets left in the gun. Twyman stated that Rodriguez told him she became extremely upset. She started to hit the Respondent and told him that he had to leave the apartment and that she was going to call 911. At that time the Respondent got his belongings, went downstairs and said he was going to wait for the police to arrive.

Twyman testified that when he arrived at the scene with other members of the Department, an examination of the room where the alleged discharge took place was made. He stated that the Crime Scene Unit came to the apartment and extracted the bullet from the wall. He explained that the bullet was extracted from an exterior wall. During his interview of Rodriguez, Twyman stated that she informed him of another discharge. She said that a discharge had taken place in 2005 when the Respondent also discharged his firearm. Rodriguez informed him that at that time she lived in a different location, [REDACTED] She told the Respondent that he had to make a choice between her and his wife and then she went to leave the apartment with her children. As they were leaving the apartment she heard a gun shot. She ran back to where the Respondent was in the master bedroom and asked him if he was okay. The Respondent replied that he wanted to get her attention.

Twyman stated that after obtaining that information from Rodriguez he went back to that apartment to make observations. The new occupant of the apartment opened the door. Twyman could not remember his name but he believed his first name was Lewis and his last name began with the letter H. He explained to the occupant that he was doing an investigation and he wanted permission to look at the floor in the master bedroom. He entered the apartment along with Rodriguez who pointed out the location where the mark on the floor was. Twyman said he moved a television cart to get to the

location and underneath the cart he observed a BIM mark. He explained that that meant a tile had been removed or was missing from the floor and that he was able to observe an indentation in the floor. He stated that the Crime Scene Unit was called to the location and they took pictures. Twyman further explained that the Bronx District Attorney's office made a decision declining to prosecute this 2005 incident.

On September 21, 2007 Twyman testified that he conducted an Official Department Interview of the Respondent. Present at that interview was himself, his immediate supervisor Lieutenant Sharkey and two other members of the Bronx Borough Investigations Unit who investigate cases involving accidental discharges, Sergeant Olsen and Captain Rayward. Twyman was asked whether he questioned the Respondent about having a dispute with Rodriguez on the night of that incident. He stated that the Respondent informed him that he did have a disagreement with Rodriguez on the incident date. The Respondent also admitted that he had an accidental discharge of his weapon on that date.

Twyman said that he was aware that the Respondent was charged with failing to deliver a prepared Acquisition or Disposition of Firearms by Police Officers Report form to the desk officer of his command. Twyman testified that when an officer receives a weapon from another member of the service the officer who is selling or disposing of the weapon has to fill out the acquisition or disposition form. The other officer who is acquiring the weapon also has to fill out the form about the weapon he is acquiring. The desk officer at the command is supposed to make a command log entry regarding the disposition of the weapon. Twyman stated that there was a command log entry made of this disposition. The parties stipulated that the firearm that was discharged on July 23,

2007 was a .38 caliber revolver serial No. [REDACTED] Twyman said that before he conducted an Official Department Interview of the Respondent, he verified who the registered owner of that gun was and he found it to be Venus Santiago (later identified as Police Officer Santiago). During his Official Department Interview, Twyman stated that the Respondent admitted that he had obtained the gun at least one year prior to the discharge date. When the Respondent was asked whether he turned in paperwork with regard to the acquisition of the firearm, the Respondent stated that he had the paperwork in his locker and he never forwarded it or handed it in to anyone.

With respect to the 2005 firearms discharge, Twyman stated that the Respondent never denied having the firearms discharge in 2005. The Respondent stated that he never reported the discharge to anyone in the Department. Twyman said that the Respondent was asked whether he knew that he had an obligation to notify supervisors about the 2005 firearms discharge and he acknowledged that he did have a duty to notify either 911 or a Department supervisor regarding the discharge. Twyman stated that the first time the Department became aware of the firearm discharge was on or about the time of the initial interview of Rodriguez which was in 2007.

During cross-examination, Twyman acknowledged that the Respondent was only interviewed once with respect to the firearms acquisition form. He admitted that the Respondent was interviewed during his Official Department Interview and that the majority of the interview involved the firearms discharge. Twyman agreed that the Respondent stated during his interview that he had the form in his locker. When Twyman was questioned as to why no further investigation was done to obtain the form from his locker, he stated that the Respondent could have placed it in his locker the day

before the interview so there was no point in going back to his locker. Twyman explained the fact that the Respondent never submitted the form coupled with the fact that the gun was still registered under the original owner lead him to believe that the allegation could be substantiated against the Respondent.

Regarding the 2007 firearms discharge, Twyman acknowledged that he responded to the location based on a 911 call. He admitted that because the case involved an off-duty member of the service, an IAB log was generated from that 911 call. He stated that the IAB log was memorialized from a IAPRO computer system printout. He also agreed that the summary from the IAPRO stated that a female identified as Rodriguez called 911 to report that her husband accidentally discharged one round into the wall of the apartment. Twyman agreed that when he responded to the location and spoke to Rodriguez she also conveyed that the discharge from the weapon was accidental. Twyman acknowledged that Rodriguez said after the shooting she popped her head into the room and found the Respondent with a bunch of bullets in the palm of his hand and the gun in his other hand expressing that he did not know the gun was loaded and that it was an accident. He admitted that the Respondent never stated that he intentionally fired the firearm into the wall. Twyman agreed that when the officers responded to the scene, the Respondent was waiting for them and handed them the loose ammunition in his hand, as well as the firearm that contained a single shell casing. Twyman agreed that the Respondent had not removed the casing from the revolver and that all of the rounds from the firearm were accounted for when the investigators arrived on the scene. Twyman explained that it was either a five or six-shot revolver. If it was a six-shot, he stated there were five loose rounds in his hand and one casing still in the revolver.

Twyman acknowledged that every law enforcement agency worries about accidental discharges including the Police Department. He stated that certain protocols are followed with respect to loading and unloading firearms. He acknowledged that despite every effort there are times when accidental discharges do take place. He admitted that this is not the first time that he heard of an accidental discharge at the Department. Twyman agreed that most commands do have unloading stations where an officer could unload his gun so that in the event of a discharge, it would go into the unloading station.

With respect to his interview with Rodriguez, Twyman stated that Rodriguez informed him that the Respondent complained to her about her smoking when he came home. He acknowledged that she told Twyman that they have issues about this because Rodriguez's mother died of lung cancer. She explained that when the Respondent came in and saw her smoking, having a beer and playing the music loud, he made mention of the smoking, lowered the music and went into another room. Once the Respondent left the room she informed Twyman that she went right back over to the radio and raised the music and that is when she heard the shot. Twyman agreed that Rodriguez was so mad at the Respondent for the accidental discharge, that she actually went up to him and started smacking him in the head. She also told him that he had to leave and she ended up calling 911 at that time.

Twyman agreed that the discussion the Respondent had with Rodriguez involved her smoking and drinking and then he left the room. Twyman acknowledged that there was no yelling or further exchange between the Respondent and Rodriguez. Twyman was questioned as to whether the circumstances involving this discussion between the

Respondent and his girlfriend amounted to a domestic dispute. Twyman stated that there was some type of conflict or argument between them. Twyman was questioned that if there was no discharge of the firearm and the only interaction between the Respondent and his girlfriend was what was described in the discussion regarding the beer and the cigarettes would he have a duty to report the incident to the Department, and Twyman stated, "No." Twyman agreed that aside from the gun shot that took place between the Respondent and his girlfriend; this was not a domestic dispute as defined by the Department.

With respect to the prior firearm discharge matter, Twyman agreed that ballistics could not say for certain that the indentation in the floor was definitely from a gun shot. Ballistics was only able to state that it was consistent with a gun shot. Twyman stated that he did not recover a shell casing at that location because Rodriguez informed him that she had recovered the bullet a few days after the incident and had disposed of it. Twyman acknowledged that the Respondent admitted that he had the prior accidental discharge and that he understood that he should have reported it to the Department at that time. Twyman stated that he conferred with the Department Advocate's Office regarding the older firearm discharge matter. He reviewed a document to refresh his recollection and testified that Assistant Department Advocate Lisa Bland informed him that the conduct was beyond the statute of limitations. Twyman also stated that he never saw administrative charges for the prior accidental discharge and his IAB case had already been closed. Twyman acknowledged that based on the information he obtained from Rodriguez referring to the prior firearm discharge, the Respondent was sent for evaluation to Psychological Services. Twyman stated that based on privileges, he was

not able to get a final disposition of the matter but he did understand prior to his case being closed that the Respondent was compliant with the counseling services program.

During re-direct examination, Twyman stated that the Respondent and Rodriguez had been in a relationship for approximately three years. He also stated that they had been living together for approximately a week. He noted that during the Respondent's Official Department Interview, he referred to the 2007 incident as a dispute and the Respondent stated that it was not a dispute. Twyman then referred to the matter as an argument and the Respondent did not reply. He later referred to the incident as a "disagreement" and the Respondent acknowledged that they had a disagreement. Twyman agreed that not only physical altercations are reported to the Department but verbal disagreements between domestic partners are also reported. Twyman explained that verbal disagreements are investigated as well to make sure that no threats were made by the member of the service.

During further cross-examination, Twyman stated that not every level of a verbal dispute is investigated by IAB. He stated that becoming a police officer does not mean that a police officer forfeits his right to have an argument at home.

Upon questioning by the Court, Twyman stated that when he responded to the location on the incident date the Respondent had already been removed to the hospital so he never spoke to him on that evening. He stated that he spoke to Rodriguez who was visibly shaken and at times cried during the times that he interviewed her. He acknowledged that the first and only time that he spoke to the Respondent was during his Official Department Interview. Twyman stated that the Respondent told him during his Official Department Interview that the discharge in 2005 was accidental.

Interview of Ivonne Rodriguez

Interview does not commence at the beginning. Parties are not identified. The interviewee states that Jeffrey Mirabal (the Respondent), left at about 1 pm to go see his baby. Interviewee, a female, (later identified as Ivonne Rodriguez) said that the Respondent has lived with her for about a week.¹ Rodriguez stated that she knew the Respondent was a police officer. She said that the Respondent returned to the residence at about 4:10 pm, approximately ten minutes before she called 911. She was in the bedroom listening to music with her own children aged 9 and 5. The Respondent came into the room and was upset because she was drinking a Heineken beer and smoking cigarettes. When asked why the Respondent did not like her drinking and smoking, Rodriguez explained that her mother died of cancer. She said that the Respondent had not been drinking that day. She said that when he goes out with his friends or when they go out together, the Respondent does drink socially.

Rodriguez said she had a quick discussion with the Respondent. He commented on her smoking and drinking and she said that she was not fighting with him and that the food was being prepared for when he came home. The Respondent then turned the music down because it was too loud and Rodriguez turned the music back up and then the Respondent left the room. Rodriguez explained that the door to the bedroom was left open by the Respondent because the dog was playing with the children and the dog was able to go in and out of the bedroom. She further explained that she could not see where the Respondent went to because of where she was seated in the bedroom. As she

¹ Twyman identified Rodriguez as the person he interviewed at the time the tape was offered into evidence. Later during the tape it was established that the interview of Rodriguez took place on the incident date of July 23, 2007.

continued to listen to her music she heard one gunshot. She left the bedroom and went to the living room.

Rodriguez stated that when she went into the living room, she observed the Respondent sitting in a chair facing a wall where the bullet hole was. She noticed that the Respondent had a gun in his right hand and the bullets in his left hand. Rodriguez said that she began to scream at the Respondent asking him why he would do that in the house with her kids; that he should go home and do that in the house with his son and she also stated that the next time he does that in the house she would call the police. She then told him that she was going to call the police and the Respondent told her to do that. The Respondent said that he would go downstairs and wait for the police and nothing was going to happen to him.

Rodriguez was asked what did the Respondent say about what happened and she said he uttered the words, "I didn't know." When asked what she thought this meant, she said maybe he meant he did not know that the gun still had a bullet in it. Rodriguez stated that when the Respondent came into the apartment, she did not know that he had a gun because she did not see it. She stated that in the week that he stayed with her she never observed his gun. She said that she has been with him for three years and he carried a gun on him in the past. He would have the gun in the waist area. When asked whether the Respondent ever left a gun at her residence, Rodriguez stated that last Thursday the Respondent was in a rush to get to work and he accidentally left the gun in the closet and came back to get it.

Rodriguez stated that she told the Respondent that he could not stay at her residence any longer and he had to leave. She began to take all of his clothes off of the

hangers and the Respondent placed all of his belongings in a bag. She stated that she was not injured nor were her children or the Respondent as a result of the incident. When asked whether she noticed that the Respondent was either despondent or depressed, Rodriguez said that she would notice the Respondent sitting alone and she would ask him what was wrong and if he wanted to leave. He would tell her that it was a "big step" (referring to the relationship) and that she should give him time. She explained that the Respondent was still married but going through a divorce. He had one nine-month old son as a result of that marriage. Rodriguez said that the Respondent expressed to her that he missed his son. She told him that since he does not work on Sundays and Mondays he should spend that time with his son and she understands because she is a parent herself.

Rodriguez said that in the time that they were dating, she never heard the Respondent arguing with his wife. She stated that she never observed him cleaning his gun before. When the interviewer characterized the discussion as an argument, Rodriguez said that it was not really an argument. The Respondent said what he said. When asked whether things ever got physical, Rodriguez said it did because she hit him in the head when she told him that he had to leave. She explained that this was the second time that he did this with her children in the house.

Rodriguez said that the other gun shot incident took place during the cold months in 2005. She could not recall the exact date. She said she was at a different apartment then located at 1368 Webster Avenue, Apartment 13K. Rodriguez stated that she informed the Respondent that she wanted to break things off with him. She told him that he could not be with her and his wife at the same time and that he needed to make up his mind what he wanted to do. She told him to leave, but he did not want to leave so she

began putting her coat on her daughter. She left the back room where they were and as she exited the room she heard a gunshot. Rodriguez ran back into the room and saw the Respondent bent over and she thought he "did it to himself." She began to scream and told her children to call 911. Rodriguez said she told the Respondent to open his coat so that she could see whether he was all right. He told the children not to call 911 because he was okay. Rodriguez stated that the weapon he used during this incident was either his 9 mm or his silver semiautomatic gun. She stated that he used his .38 revolver in the 2007 incident.

Rodriguez stated that she did not call the police in 2005 and neither did her children or the Respondent. The police did not respond to the location on that date and she stayed with the Respondent in that apartment until it was time for him to go to work. She stated that the Respondent never looked for the bullet, but she did. She found a crushed object believed to be a bullet in between the shoes. She could not recall if she found a shell casing. She stated that she threw the object she found in the garbage. She stated that the bullet hit the floor. When asked whether the Respondent ever explained what had happened, she stated that the Respondent told her that he did it because he needed to get her attention because she was leaving him. She explained that prior to the gun shot, the Respondent was calling out to her but she was planning to leave the apartment and never stopped. She did not actually get to leave the apartment.

[A narrative was heard on the tape that investigators from the Bronx Borough Investigations Unit along with investigators from IAB Group No. 22 and Rodriguez responded to [REDACTED] The existing occupants of the apartment granted access to the apartment. Rodriguez pointed out an area on the floor in

the back bedroom where a piece of tile was missing and stated that that was the area where the bullet fired. Members of the Crime Scene Unit went to the location and a follow-up investigation will follow].

Rodriguez was asked whether she was injured during the 2005 firearms discharge incident and she stated that she was not injured nor was anyone else. She stated that she did not have any physical altercation with the Respondent during the 2005 incident.

Rodriguez was asked whether there was any other occasion when the Respondent unholstered his firearm and either pointed it at her or at himself. She said that he did not point his firearm at her, but he did point his firearm at himself. Rodriguez explained that a week following the 2007 incident, she stayed with the Respondent and then informed him again that nothing had changed between them and that she needed to be left alone. Rodriguez said that the Respondent then sat on the washing machine in the apartment and took his black firearm and pointed it in his mouth. He was crying and stating that he could not take it anymore. Rodriguez said she opened the apartment window and screamed out for someone to call 911. The police never responded. Rodriguez said the Respondent left the apartment and she did not know where he went.

Another incident Rodriguez described was when she found out that the Respondent's wife was pregnant in July of 2006. Rodriguez stated that she contacted the Respondent's wife Cathy and found out that she was seven months pregnant. Rodriguez said this was the first and only time that she contacted Cathy and Cathy learned at that time that the Respondent was having an affair. Some weeks later in August 2006 Rodriguez stated that the Respondent informed her that he could not take it anymore and wanted to take his car somewhere and "throw it and end it."

Rodriguez stated that she wants to leave. She explained that she feels threatened because the Respondent told her no matter what happens do not call the police and she called the police on the Respondent. Rodriguez was asked if this matter led to criminal charges being filed against the Respondent would she cooperate and she stated that she would not. She explained that she cannot because she still has feelings for the Respondent. Rodriguez stated that the Respondent no longer has keys to her apartment because she took them from him. She was advised that if the Respondent shows up at her apartment to not open the door and just call 911.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The following stipulation was entered into between the parties: There was a psychological evaluation done of the Respondent and it was determined by a Department staff psychologist that the Respondent was in full compliance, that his psychological evaluation was complete and that there was no psychological reason why the Respondent 1) could not perform full duties and 2) there was no psychological reason why he could not perform full duties with his firearm. The Respondent is a seven-year-member of the Department currently assigned to the Manhattan Court Section. He testified that he has been assigned to that unit for the past 16 months. He explained that he had been modified since the accidental discharge which occurred in July of 2007. Prior to being assigned to the Manhattan Court Section he was assigned to Transit District No. 12 for

six years. He stated that he had been assigned to Transit District No. 12 after leaving the academy. He also stated that he made hundreds of arrests in his career as a police officer.

On July 23, 2007, the Respondent testified that he was living at 1201 Ogden Avenue where he had been residing for approximately a week living with Rodriguez. He stated that he lived there with Jadiel Aponte and Genesis Marcano. The Respondent stated that he had been in a relationship with Rodriguez for two years. He was going through a divorce with his wife and when his divorce was finalized he moved in with Rodriguez. Prior to moving in with Rodriguez his residence was 68 Hardy Place in Yonkers, New York. He stated that his wife was still living at that residence and that there was no animosity between them. He said that he went back and forth between residences.

The Respondent stated that on July 23, 2007 it was his regular day off and he had spoken with his girlfriend and informed her that he was going to visit his nine-month old baby. He went and spent two or three hours with the baby at [REDACTED]. He also had to pick up some things he left at the residence including a gun that he had in his safe. The Respondent explained that he was no longer living at the [REDACTED] residence and that he was planning to take the gun to his command and leave it in his locker. He said that the firearm was a .38 caliber Smith and Wesson.

The Respondent testified that he obtained the firearm from his safe, that it was a firearm which had either five or six shots in it and that he took it to the Ogden Avenue residence. When he arrived at the residence the music was "blaring." He stated that he could not even think. He went into the room and he saw his girlfriend smoking and drinking. He told her what he thought about what he observed and she told him to go to

the living room which he did. He said that that was the extent of their discussion. He explained that he told her that he did not like her drinking and smoking. He stated that that is how Rodriguez's mother had died approximately three months earlier of lung cancer and she died a terrible, slow death. The Respondent said he went to the living room and as he sat down the revolver was in his waist. It began to bother him so he got up and tried to unload it. He stated that he thought he unloaded all of the bullets. When he closed it, he realized that there was one of the bullets stuck in the gun and just as he closed it, it fired. He explained that he was handling a revolver not an automatic weapon and that there was no clip to take out. He said he was holding the gun in his right hand and that the .38 has a cylinder. He further explained that because the gun has a cylinder, he popped the cylinder out with his left hand but he had to bring the hammer back to release the cylinder to get it open so he shook out all of the bullets and when he went to close it, the hammer slipped out of his thumb and that is when the gun went off. He stated that he was able to shake out all of the bullets except one. The Respondent stated that there were kids in the house and that when there are kids in the house he makes a decision to unload his gun.

The Respondent stated that when living with either his girlfriend or his wife his usual practice was to leave his firearm at his locker, but on the occasions when he did bring it home, he attempted to make it safe by unloading it. He stated that at the time that he was attempting to unload the gun he had it pointed toward an exterior wall and the ground. He stated that this is how he was trained to unload his firearm. Once the firearm discharged, the Respondent stated that he was startled. His girlfriend came running out of the bedroom and started hitting him in the head. He told her that he was sorry and that

it was a mistake. He said when Rodriguez ran out of the bedroom; he still had the firearm in his right hand. The Respondent said Rodriguez was very upset and she told him that he had to leave. He stated that he got up and was heading downstairs and she also told him that she was going to call 911. He stated that she also told him that she was going to mess him up so bad that he was not going to be able to provide for his child. Within a minute of getting downstairs the Respondent stated that regular patrol officers arrived at the residence. The Respondent said he was in his vehicle and still had the bullets in his left hand and he had placed his gun on the floor of his car. Once the police officers arrived, he put his hands up and informed them that he was a New York City police officer. He explained that when the officers arrived he was on the phone attempting to contact a supervisor at his command to let him know what was going on. Shortly thereafter, a patrol supervisor arrived and he gave his weapon and ammunition to him. The Respondent said he was removed eventually from the scene and taken to Lincoln Hospital to determine if he had any trauma or any other hearing problems. The Respondent stated that he did not have hearing problems and he was checked out at the hospital. The Respondent denied being in any type of argument or fight with his girlfriend prior to the discharge of his weapon. He denied either raising his voice or that his girlfriend raised her voice. He also denied arguing or threatening her or that she threatened him. He denied discharging his weapon because of the dispute that they were having.

The Respondent stated that he acquired the .38 caliber weapon from Venus Santiago a police officer. He stated that it was an understanding that once he acquired the firearm, "I had to prepare an acquisition form." After that he had to show the form to

the sergeant at the desk who would log it in and his next step would be on his next range date he had to present the paperwork as well as the gun. The Respondent denied ever taking the paperwork and gun to the range at any point. The Respondent acknowledged that by filling out the acquisition or the disposition of firearms form he had satisfied his responsibilities up until that point. The Respondent said that both he and Santiago were present when the form was given to Sergeant Oates. The Respondent was shown a document which he identified to be a disposition of firearms acquisition form Respondent's Exhibit (RX) A. The Respondent said he recognized the document because it had his handwriting on it. He said it also had the handwriting of Santiago and Oates. When asked when he filled out the document, the Respondent stated, "10/04/06." He said that was the same day that he was given the firearm by Santiago.

The Respondent explained that he purchased the gun from Santiago and then they went to Oates who informed them of the particular form that had to be filled out. After the form was filled out, Oates made a command log entry. He told the Respondent that the best thing for him to do was at his next range date to take the gun that he purchased and the paperwork so that it could be logged in with the Police Department. The Respondent acknowledged that Oates signed and dated the form. The Respondent stated that Santiago then put information into the command log but he did not read it. The Respondent stated that Oates never told him that he had to fill out a separate form from the one that was handed in with Santiago. He said that as far as he knew with regard to Oates, the form that was submitted was fine for the transaction that had just transpired.

During a *voir dire*, the Respondent was questioned as to whose signature was on the bottom of the form to indicate that they were submitting the form. The Respondent

replied, "PO Venus Santiago." The Respondent acknowledged that everything on the form was completed and certified by Santiago and that the only thing related to him was that it was circled that the gun was being disposed to him.

Upon questioning by the Court, the Respondent stated that the part of the form that he completed was the section in the middle which inquired about who the firearm was being disposed to.

During further direct-examination, the Respondent stated that his date of birth and social security number were also contained on the document and that he filled in the information.

The Respondent said that he learned that he was going to be questioned in his Official Department Interview about an older firearms discharge in 2005 at the time of that interview. He stated that he could not recall the exact date of when the prior discharge took place but he could recall the incident. He explained that he was trying to clean his gun when he took out the magazine. He got distracted by something else and when he came back to cleaning the gun, he forgot to rack the gun, so when he was taking it apart the gun went off. The Respondent said that the firearm, a Glock 26, held ten rounds in that clip. He explained that the gun holds ten rounds in the clip and one in the chamber. The Respondent stated that the Police Department requires him to keep 11 bullets in the gun at all times and that on that incident date the gun was properly loaded at the time he was cleaning it. Once the gun discharged, the Respondent said that the bullet hit the floor. He stated that he was pointing the gun at the floor at the time. The Respondent stated that he failed to report the incident to the Police Department and that it was foolish of him not to do so.

With respect to the July 23, 2007 discharge the Respondent said he went to the hospital for trauma but he also stayed at New York Presbyterian Hospital for observation for a week. He explained that he was ordered to have observation by the Police Department. Following his treatment at the hospital he had to complete follow-up care with the Police Department's Psychological Services Section. The Respondent said he was informed that he was fit for duty. The Respondent stated that both discharges were a complete accident and he understood that if he would ever get his firearm back, he would have to be more careful in terms of loading and unloading his firearm.

During cross-examination, the Respondent acknowledged that on July 23, 2007 he went to his former apartment to retrieve his firearm and then went back to the apartment he shared with Rodriguez. He admitted that when he entered the apartment he smelled smoke, he heard loud music blasting and when he went to the bedroom he found Rodriguez smoking a cigarette and consuming alcohol. He acknowledged that he was upset about what he observed. He also acknowledged that he spoke to her about his observations as well as turned down the music. He acknowledged that he left the room and the music was turned back up and he had an accidental discharge of his firearm while in the living room.

With respect to the acquisition or disposition of firearms by Police Officer form the Respondent acknowledged that the personal data information was completed by Santiago. He also acknowledged that the certification of the document was also signed by Santiago. The Respondent said he was not aware that he had an obligation to complete the form stating that he, in fact, had acquired the firearm from Santiago. The Respondent said that the only form he was informed about was the one that was in

evidence. He stated that he never checked the Patrol Guide to determine what his responsibilities were once he acquired a firearm from another member of the service. The Respondent denied ever completing his own acquisition or disposition of firearms form and signing the certification as Santiago did.

With respect to the firearms discharge at the Webster Avenue location, the Respondent acknowledged that he had an accidental discharge in that apartment in 2005. He stated that he was aware that as a police officer he had a duty to notify the Department of the accidental discharge. He admitted that he never did notify the Department of the discharge.

FINDINGS AND ANALYSIS

Specification No. 1

The Respondent stands charged herein with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department in that on or about July 23, 2007 he did discharge one round from his Smith & Wesson, .38 caliber revolver, serial # [REDACTED] during a domestic dispute. The Respondent is found Not Guilty as charged. Evidence adduced at trial established through the testimony of the Respondent that he had a discussion with his girlfriend about her drinking alcohol and smoking cigarettes. He acknowledged that he was upset that she was smoking particularly since her mother died of lung cancer, but he denied yelling at her or that they were arguing. He stated that following his remarks to her in the bedroom, he left the bedroom and went to the living room where he attempted to unload his firearm. He testified credibly that he was unloading his gun because his girlfriend had her two, minor children in the apartment and

that is what he normally does. He stated that he was upset and as he attempted to shake out the bullets from the revolver, the hammer accidentally slipped and the firearm discharged. He testified that he was startled and Rodriguez ran into the room, began to hit him in the head and told him that he had to leave. He told her that the discharge was an accident.

A review of the hearsay interview of Rodriguez conducted on the date of the incident July 23, 2007 corroborated the Respondent's testimony. Rodriguez stated that she was playing loud music in the bedroom, drinking a Heineken beer and smoking a cigarette when the Respondent came home from work. He confronted her about her drinking and smoking. As he turned down the music, he left the bedroom. Rodriguez said they were not arguing. In fact, she said that she informed him she did not want to fight and that she had begun to prepare his meal. The Respondent left the bedroom and then she heard a gunshot. When she ran out of the bedroom to the living room, she observed the Respondent sitting in a chair facing a wall with a bullet hole in it. He had bullets in his left hand, a firearm in his right hand and he made a statement to the effect, "I don't know." She stated that she thought he meant he did not know there was still a bullet left in the firearm. I found the hearsay statement of Rodriguez to be credible. She also said she found the Respondent sitting and facing a wall with bullets in his hand. This was consistent with his testimony that he was in the process of unloading his firearm when it accidentally discharged. Rodriguez also stated that she began to hit the Respondent in the head after the shooting. This is evidence that she was not in fear of him following the firearm discharge.

Investigator Twyman testified that he responded to the scene on the incident date. He received the Respondent's firearm with the bullets and the shell casing still in the firearm. He stated that all of the bullets connected with the Respondent's firearm were accounted for that night. He corroborated that the bullet hit an exterior wall in the apartment. Twyman testified that with all the safeguards practiced by members of the service, accidental discharges do take place. He also testified that the Respondent facing an exterior wall in an effort to minimize the risk of injury to anyone should the firearm accidentally discharge was consistent with Department training procedure.

Based on the above, I find that the Respondent did not discharge one round of his revolver during a domestic dispute. Rather, he had an accidental discharge from his firearm while attempting to unload his firearm.

Accordingly, I find the Respondent Not Guilty of Specification No. 1.

Specification No. 2

The Respondent stands charged herein with failing and neglecting to properly safeguard his firearm by discharging his .38 caliber revolver for no legitimate purpose. The Respondent having pleaded Guilty to this Specification is found Guilty. The Respondent admitted at trial that he did fail and neglect to safeguard his firearm on July 23, 2007 resulting in its discharge. He explained that following a discussion with his girlfriend in the bedroom which made him upset, he left the bedroom and entered the living room and was attempting to unload his firearm by emptying the bullets from the revolver, but inadvertently left one in the chamber resulting in the discharge of the firearm when the hammer was accidentally released.

Accordingly, I find the Respondent Guilty of Specification No. 2.

Specification No. 3

The Respondent stands charged herein with being wrongfully in possession of an unauthorized New York City Police Department shield without permission to do so. The Respondent pleaded Guilty to this misconduct and offered no explanation as to why this transpired.

Accordingly, I find the Respondent Guilty of Specification No. 3.

Specification No. 4

The Respondent stands charged with failing to deliver a prepared Acquisition or Disposition of Firearms by Police Officers-Report to New York State Police form (PD 424-150) to the desk officer of said officer's command. I find the Respondent Guilty of this Specification. It must be noted that the Respondent is charged under Interim Order No. 5-Revision to Patrol Guide 204-10, "Handgun Purchase." This particular section of the Patrol Guide refers to the acquisition of handguns by uniformed members of the service from a handgun licensee, the equipment section or from some other source. In this particular instance, however, the Respondent purchased his handgun from another member of the service. The correct section of the Patrol Guide which addresses this type of purchase is Interim Order No. 6-Revision to Patrol Guide Procedure 204-13 "Selling/Disposing of Handguns to Another Uniformed Member of the Service or to a Licensed Firearms Dealer in New York State" section. Given that amending the charge to reflect the correct Interim Order is ministerial in nature and does not affect notice of the nature of the Charge to the Respondent, this Court amends the section of the Patrol Guide Charge to conform to the proof in this instance.

The Respondent stated in his defense that he was present along with Police Officer Santiago when the PD 424-150 form was presented to Sergeant Oates. The form was received in evidence as RX A. Upon a review of the form, there is a check box which allows only one of four boxes to be checked. The four boxes are: acquisition, modification, disposition and previous authorization. In this instance the box, "disposition" was checked. At the bottom of the form the certification was signed by Santiago certifying that the above information (i.e., that her firearm was being disposed to the Respondent) contained on the form was correct and being submitted as required by law. Although the form noted that the firearm was disposed to the Respondent, there is no accompanying certification line to be completed on this form by the Respondent. The form stated in pertinent part:

*"Use one form for each firearm that you **acquire, dispose of or modify.**"* (Emphasis added). Based on a reading of this form, it stands to reason that one form is to be completed by a member of the service who **acquires** a firearm from a fellow member of the service and another form is to be completed when a member of the service **disposes of** a firearm to another member of the service. This is based on a reading of the form which states that only one box can be checked. Completing one form cannot serve to both dispose of and acquire the firearm. In addition, the form states on the bottom under "Distribution" that one copy goes in the member's personnel file and another copy is retained by the member. Both Santiago and the Respondent would not each have a copy in their personnel file if only one form was completed.

In this instance, the disposition of the firearm was noted by the completion and certification of this form by Santiago. The Respondent had a duty to complete a separate

form for his acquisition of the firearm from Santiago. He should have checked the one box for "acquisition" noting that he acquired the firearm from Santiago and then signed the certification at the end of the form certifying that the information was correct and being submitted as required by law. It is not a defense that the Respondent did not get any additional information from Oates regarding the acquisition of the firearm. In fact, the Respondent testified that he was told by Oates to take the form to the range along with the firearm. The form is dated October 4, 2006. The Respondent testified before this forum on December 8, 2008 that the form remained in his locker and he never took it to the range as directed. Had the Respondent complied with the directive, he would have learned that he had to complete a separate form for acquiring the firearm.

Accordingly, I find the Respondent Guilty of Specification No. 4.

Specification No. 5

The Respondent stands charged with wrongfully engaging in conduct prejudicial to the good order, efficiency and discipline of the Department in that after discharging his firearm while off duty in October 2005, he did fail to request a patrol supervisor, and thereafter continually failed to notify the Department of the firearms discharge until July 23, 2007. The Respondent is found Guilty. Evidence adduced at trial established through the hearsay testimony of Rodriguez was that the Respondent discharged his firearm in her apartment on or about October 2005. She went with Department investigators to her former apartment where the incident transpired. She led them to the apartment and the exact location on the floor where the bullet struck. According to

Twyman, the investigator in the case, the ballistics expert found that the damage to the floor was consistent with a bullet being discharged there.

The Respondent testified during direct examination that he was cleaning his Glock in 2005 when it discharged. He admitted during cross-examination that he had an accidental firearm discharge in the [REDACTED] apartment in 2005 and that he never reported the incident to the Department. He acknowledged that as a police officer, he had a duty to report the firearm discharge to the Department. It was established through testimony at the trial that the Department did not learn of the 2005 firearm discharge until Twyman spoke to Rodriguez in July of 2007.

The Respondent argued in his defense that the 18-month statute of limitations to prosecute an act of misconduct had expired by July 2007 and that he should be found Not Guilty of Specification No. 5. The Respondent failed to take into consideration that it was his own concealment of the firearms discharge that led to the delay in prosecution. The Assistant Department Advocate aptly noted in her summation the seminal case of Matter of David Steyer, 70 N.Y.2d 990, 992 (Court of Appeals) 1988. But the Court of Appeals in New York decided that it is not the continuous nature of the misconduct that prevented the statutory period from running, but rather the Respondent is estopped from asserting the statute of limitations to bar the disciplinary proceeding. Steyer, supra at 992. The Court held that the doctrine of equitable estoppel stands for the proposition that “one may not take advantage of one’s own wrongdoing,” i.e., the wrongful concealment, which gave rise to the delay in prosecution of the case. Steyer, supra at 993. In the Steyer case, the Court of Appeals affirmed the lower court decision which held that sheriff deputies could be disciplined months after the statute of limitations had expired

for violating the civil rights of a murder suspect because they concealed their own wrongdoing during the statutory time period and therefore could not take advantage of the statute of limitations.

Similarly in this case, the Respondent could not take advantage of the statute of limitations where he concealed the discharge of his firearm in 2005 resulting in the delay in prosecuting this matter within the 18-month statutory period. The Respondent as a police officer had an affirmative duty to report the discharge of his firearm. This is not the same as any other administrative failure on the Respondent's part. Leaving an assigned post or failure to submit a required form for a firearm, for example, do not equate to the failure to report the discharge of a firearm. Discharge of a firearm, even if accidental, can have deadly consequences. This is why the Department views firearm discharge cases very seriously. In fact, the discharge of one's firearm results in a thorough investigation by a unit whose purpose it is to investigate firearm discharge cases. The effect of the Respondent's failure to report his 1995 firearm discharge was two-fold. It deprived the Department of the opportunity to conduct a full and fair investigation into the matter and to make a determination as to whether the discharge was, in fact, an accidental discharge, or something other than accidental which may have resulted in discipline, including termination, if warranted.

The failure to report the discharge prevented an interview of Rodriguez at that time. Rodriguez in her 2007 interview (DX 1) described something other than an accidental discharge. She stated that the Respondent informed her that he discharged his firearm to get her attention because she was leaving him. The Respondent's failure to

report this incident deprived the Department of the opportunity to fully investigate the matter.²

The failure to report the firearm discharge in 2005 also prevented the Department from seeking to retrain the Respondent if the Department felt it was warranted.

Retraining may have prevented the Respondent's second firearm discharge in 2007.

Accordingly, I find the Respondent Guilty of Specification No. 5.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Police Department on July 1, 2001. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of failing to safeguard his weapon in 2007 resulting in its discharge. He has also been found Guilty of failing to notify the Department of a 2005 firearms discharge. The Respondent was also found Guilty of being in wrongful possession of an unauthorized shield, and failing to deliver a prepared Acquisition or Disposition of Firearms by Police Officers- Report to New York State Police form to the desk officer of his command. The most serious of the charges the Respondent has been found Guilty of is failing to safeguard his weapon resulting in a

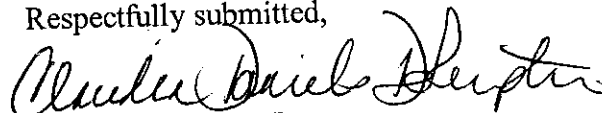
² It must be noted that Rodriguez described in her interview the Respondent's subsequent use of his firearm during a 2007 incident following the one charged. She stated upon informing the Respondent that nothing had changed in their relationship and that she needed to be left alone, the Respondent proceeded to sit on a washing machine and point his black firearm in his mouth. Rodriguez said that although she screamed out for help and for the police, the police did not arrive at her residence. This allegation was never addressed at trial and thus cannot be considered by the Court.

discharge and failing to notify the Department of a firearms discharge. It must be noted that in both instances where the Respondent's firearm discharged, it immediately followed a discourse with Rodriguez. Although the Court found that they were not in a domestic dispute when the firearm discharged during the 2007 incident, they did engage in a discussion which left the Respondent upset. Also during the 2005 incident, Rodriguez told the Respondent that he had to choose between his wife and her and she was leaving him. The Respondent followed this discussion with a firearms discharge.

It is clear from these two instances that the Respondent has difficulty handling his weapon when placed in these stressful situations. The Respondent had two firearm discharges in a two-year period in the presence of his girlfriend and her minor children in her apartment. Why the Respondent chose that moment in each instance to handle his firearm is not understood. What is clear, however, is that the Respondent has demonstrated his inability to handle his firearm during stressful situations. In addition, the Respondent has demonstrated his inability to comply with Department procedure by failing to report the discharge of his firearm in 2005.

Given the serious nature of these two violations in and of themselves, the Court can make only one recommendation. That the Respondent be terminated from his position as a police officer with the New York City Police Department.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner-Trials

